IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Appeal No. 733 of 2001
(Old No. 178 of 1984)

Smt. Dilkaura W/o Govind Singh
R/o Village Barnu
Patti Juwa
District Tehri Garhwal ……..Appellant

Versus

State …….Respondent.

Sri Pankaj Purothit, learned counsel for the appellant.
Learned A.G.A. for the State.

Coram: **Hon'ble P.C. Verma, J.**
Hon'ble B.C.Kandpal, J.

1. This criminal appeal arises out against the judgment and order dated 23.11.1983 passed by Sessions Judge, Tehri Garhwal in Sessions Trial No. 12 of 1983, State versus Smt. Dilkaura convicting the accused/appellant under Section 302 I.P.C. and sentencing her to life imprisonment.

2. Brief facts of the prosecution case are that on 18.12.1982, in the afternoon, Kundan Singh since deceased, broke away the stone slabs of the roof of the accused house and threw the labs inside her courtyard and in the verandah after removing them from the room. Thereafter, Smt. Dilkaura, the accused, went to Gulab Singh (Pradhan of the Village) and informed his that Kundan Singh S/o Hari Singh who was the elder brother of the husband had broken the roof of her house and the stone slabs of the roof.

3. After hearing the entire incident from her, Gulab Singh accompanied by Shiv Singh, Kripal Singh and Amar Singh came to her house and saw the roof of her courtyard in her verandah and also on the back side of her house, where they enquired from Kundan Singh (since deceased) who was the neighbour of the present accused Smt. Diljaura as to why he had broken the roof and thrown away the slabs thereof. At the outset, he denied regarding the above incident but at the same the Sinak Singh S/o Sri Nanku R/o Sivali Patal who was also present by the side of the Pardhan at that time told that it was Kundan Singh who had himself broken the roof and thrown the stone slabs of the house of Smt. Dilkaura. After hearing this, Kundan Singh took a *daranti* in his hand and started abusing Gulab Singh and his companions.

4. The accused Smt. Kilkaura told Gulab Singh and other persons while they were returning back that they should accommodate her and her children in their house as she could not stay in her house any more. Kundan Singh threatened Gulab Singh and other persons with the words that whoever gives shelter to Smt. Dilkaura-accused and her children, would meet the same fate and his house would also be broken in the same way. Gulab Singh and other persons got afraid and did not give shelter to the accused Smt. Dilkaura. During the night she was sitting in front of her door and his son sleeping inside the house. At about 10-11 p.m. Kundan Singh came to the house of the accused- Smt. Dilkaura with a Kulhari in his hand, which was snatched by the accused and killed Kundan Singh, due to which he died at the spot.

5. In the morning of 20.12.1982 at about 6:00-7:00a.m. Smt. Dilkaura went to Gulab Singh who was present in the house of Shiv Singh and told the entire incident of previous night. Thereafter a written report was got prepared by Gulab Singh on the dictation through Shiv Ram and the same was sent to the Patwari, on the basis of which a chick F.I.R. was prepared and the case was registered against the accused Smt. Dilkaura, under Section 302 I.P.C. at about 5:00 p.m. The investigation was taken up by the Patwari – Kulanand Joshi. During the course of investigation Kulanand Joshi – Patwari examined Ami Chand at Patwari Chawki itself and reached the place of occurrence on 21.12.1982.

6. On 21.12.1982, Patwari – Kulanand Joshi recovered the dead body of the deceased Kundan Singh and prepared the inquest on the person of the deceased. He recorded the statement of the witnesses and sent the body for post mortem. Dr. B.C. Pandey has conducted the post mortem examination on the dead body of the deceased Kundan Singh and found following ante mortem injuries on h is person:-

> *"1. Incised wound with fractured nasal bone underneath 4cm X 0.75cm X bore deep over the middle part nose, oblique direction, margins clear.*
>
> *"2. Lacerated wounds 3 in number, scattered over the back skull size varying from 2 cm X 0.5cm X bone deep to 6cms X 1 cm X bone deep, margins irregular various directions.*

3. Incised wound 2 in number, over the middle skull size 4 cms X 0.75cm X bone deep and 5 cms X 10.75 cms X bone deep margin clear direction obligue.

4. Contusions over right shoulder region in area of 6 cms X 4cms. 3 in number size varilable from 1 cm X 0.5 cm to 2 cms 1cm.

5. Contusion 2 cms X 3 cms size over the left lower chest 2 cms below the nipple.

6. Cut wound (incised) over the right neck region, size 5 cms X 0.75 cms X muscle deep. Margins clear and ends tapering 2 cms below the angle of mandible."

The doctor opined on an internal examination of the dead body, aforesaid, he found that the membranes as well as the brain itself had become pale; pleura had also become pale as also the lungs as well as pericardium; both the chambers of the heart had contracted and were empty; he also found semi solid food 300 gms in the stomach and semi digest food present in the small intestines and faecal matter and gases present in the large intestine.

7. After submission of the chargesheet the accused/appellant was committed to the Court of Sessions and the learned Sessions Judge, Tehri Garhwal on 20.09.1983 framed the charge under section 302 of the Indian Penal Code against her. The accused denied of the charge leveled against her and claimed her trial.

8. The prosecution in order to support its case produced Gulab Singh (P.W.1), Ami Chand (P.W.2), Kripal Singh (P.W.3), Vinod Chandra Rawat (P.W.4), Km, Babli

(P.W.5), Dr. B.C. Pandey (P.W.6), Kulanand Joshi (P.W.7). (P.W.8), (P.W.9), (P.W.10), (P.W.11), (P.W.12).

10. After the evidence of the prosecution was over, the statements of the accused/appellant and other co-accused were recorded under Section 313 of the Criminal Procedure Code. The accused persons did not adduce any evidence in their. Defence.

11. The learned trial court, after hearing learned counsel for the parties and having perused the entire evidence on record convicted the accused under Section 302 of I.P.C. and thereon sentenced her for life imprisonment vide judgment and order dated 23.11.1983.

12. Feeling aggrieved by the impugned judgment and order, the convicts preferred the appeal before the Allahabad High Court, which has been transferred to this court after creation of new State of Uttaranchal.

13. We have heard the learned counsel for the parties and perused the record.

14. As far as this fact is concerned that Kundan Singh was murdered and killed by the appellant Smt. Dilkaura, the same has been established by the evidence adduced by the prosecution. The witnesses produced by the prosecution have categorically deposed in their evidence that on 18.12.1982, Kundan Singh – deceased who was the elder brother of the husband of the appellant, had broken the roof of the house as

well as the stones slabs of the roof and when he was asked by the witnesses that as to why he had done this act, then he said that they should not interfere in the matter. The deceased while replying to the quarries of the witnesses also started abusing them and warned them also that whosoever would be providing the shelter to the appellant Smt. Dilkaura he will destroy his house as well.

15. In this regard, deposition of Gulab Singh (P.W.1) would be pertinent who has deposed that at 3 to 4 P.M. on 18.12.1982 Smt. Dilkaura came to him and told him that Kundan Singh had broken his house as well as damaged the roof. This witness is a Pradhan of the village and he went to the spot along with certain other persons and saw that the roof of the house of Smt. Dilkaura was damaged and the stones underlying the roof were also removed by the deceased- Kundan Singh. This witness asked Kundan Singh as to why he had done so then Kundan Singh started abusing him and also warned that he will also kill Smt. Dilkaura. This witness has further deposed that Smt. Dilkaura requested him to take her and her children to his house in order to have a shelter therein as her house was not in a position to live. Hearing this the deceased Kundan Singh replied that whosoever will provide shelter to Smt. Dilkaura, he will have to face the dire consequences. On this threat, extended by the deceased Kundan Singh to the Punches, they were scared and went to their houses. This witness has further deposed that on the next day in the morning Smt. Dilkaura came to him and informed him that she had killed Kundan Singh in the night. This witness thereafter went to the house of Smt. Dilkaura and found the dead body of Kundan Singh.

16. Kripal Singh (P.W.3) who accompanied the Pradhan- Gulab Singh (P.W.1) went to the house of Smt. Dilkaura which was damaged by the deceased Kundan Singh This witness has stated that Gulab Singh (P.W.1) informed him about the incident of 18.12.1982 which occurred at 3.00 p.m. Thereafter, he along with Gulab Singh (P.W.1) went to the spot and saw that the house of Smt. Dilkaura was damaged and the roof was also demolished. This witness has stated that he and other persons asked Kundan Singh as to why he as done so then he said that he had done whatever he liked. This witness has further deposed that on 19.12.1982 in the morning, Smt. Dilkaura came to his house along with Gulab Singh (P.W.1) and informed him that in the night Kundan Singh came along with an axe and then she wanted to stop him from entering into the house by pelting stones but the deceased Kundal Singh did not stop then she had killed him with the axe which the deceased was carrying with him at the time of the incident.

17. Again Ex. Ka.-3 judicial confession made by Smt. Dilkaura before the Sub-Divisional magistrate, Vinod Chandra Rawat (P.W.4) reveals that Smt. Dilkaura had confessed therein that the deceased Kundan Singh demolished her house and when she complained against this act to the Pradhan Gulab Singh (P.W.1), who asked Kundan Singh as to why he had done so then Kundan Singh abused the Pradhan. She has also stated that she asked Pradhan that Kundan Singh will murder her as Kundan Singh and extended the threat to her that wherever she would reside, he will kill her. She requested the Pradhan-Gulab Singh (P.W.1) as well as other persons assembled at her

house to provide the shelter but nobody provided her any shelter in the night. She had further deposed in her confessional statement that in the night Kundan Singh came to her house with an axe in his hand and when she saw him coming to her house then she pelted stones so that Kundan Singh might escape from there but Kundan Singh did not stop and in spite of the pelting of stones by her he started entering inside the house then she snatched the axe from his hand and assaulted at him. She has further deposed that in the next morning she went to pradhan-Gulab Singh and informed about the occurrence.

18. The confessional statement of the accused/appellant Smt. Dilkaura was proved by the S.D.M. who was produced by the prosecution as Vinod Chandra Rawat (P.W.4)

19. The Post-mortem report also reveals that the deceased Kundan Singh had sustained incised and lacerated wounds on his person and the doctor has deposed before the court that these injuries could have been caused by the axe.

20. Therefore, keeping in view the evidence adduced by the prosecution, it is quite clear that it was Smt. Dilkaura who killed Kundan Singh with an axe.

21. Learned counsel for the appellant has argued that Smt. Dilkaura killed Kundan Singh-deceased in the exercise of right of private defence of her person. It has been submitted on behalf of the appellant that Smt. Dilkaura was staying in her

house along with her kiths and her husband was not present in the house on 18.12.1982 as well as in the intervening night of 18/19.12.1982. It has also been submitted that the appellant was frightened and also absolutely scared by the incident which took place on 18.12.1982 at 3:00 p.m. She was also frightened by the threatening extended by the deceased and it was the only reason that there was a reasonable apprehension of danger on her person from an attempt of threat to commit her murder. Therefore, the appellant killed Kundan Singh by exercising the right of private defence of her person.

22. Learned counsel for the State has raised an objection to the submission advanced by the learned counsel for the appellant and has argued that the appellant had exceeded her right of private defence and in fact at the time of the commission of crime, there was no eminent danger or reasonable apprehension of danger to her person.

23. In the light of the evidence available on the record, it is now to be seen whether the right of private defence of person was available to the accused/appellant at the time of the commission of crime or not. In this context, the provision of 102 I.P.C. would be relevant which reads as follows:-

> ***"Commencement and continuance of the right of private defence of the body:-*** *The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt of threat to commit the offence though the offence may no t have been committed; and it continues as long*

as such apprehension of danger to the body continues."

In view of the aforesaid provision the time is fixed when the right of private defence commences and the time during which it continues, the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt of threat to commit an offence. Albeit the offence might not be committed and such right continues so long as such apprehension of danger to the body continues.

24. The evidence on record clearly reveals that on 18.12.1982 it was the deceased Kundan Singh who demolished the roof of the house of the accused/appellant Dilkaura and removed the stones slabs of the roof which were underling. It has also come in the evidence that Kundan Singh extended the threats to Smt. Dilkaura that he would kill her wherever she lives.

25. The witnesses produced by the prosecution have categorically stated that it was the deceased Kundan Singh who demolished the house of the appellant Dilkaura and when they asked to the deceased as to why he had so then Kundan Singh replied that he in fact had demolished the house and now whosoever will provide shelter to Smt. Dilkaura, he will also deal with him in the same manner.

26. It has also been deposed by the witnesses in their evidence that Smt. Dilkaura requested the persons assembled at her house to provide the shelter but none could be ready to

provide her any shelter in the night. Therefore Smt. Dilkaura remained in her demolished and broken house with her kith in a frightened state of affair.

27. The judicial confession of the accused/appellant Smt. Dilkaura established this aspect that she was scared when she saw the deceased coming to her house in the night of 18/19.12.1982. As soon as Smt. Dilkaura saw the deceased Kundan Singh to her house with as axe in his hand, a reasonable apprehension of danger on her person, arose from an attempt of threat to commit the offence. The threat had already been extended by the deceased Kundan Singh during the day hours that he would kill her.

28. In is an admitted fact that Smt. Dilkaura was staying in her house and her husband had gone to another village as is evident from the evidence of Ami Chand (P.W.2) who had deposed that on the date of the occurrence husband of Smt. Dilkaura had gone to village Qulagi. This witness has deposed that Pradhan-Gulab Singh (P.W.1) asked him to call the husband of Smt. Dilkaura then he went to the village Qulagi. He came to know that her husband was not there then he went to village Sakri, but husband of Smt. Dilkaura did not meet him over there. This witness was informed by the villagers that husband of Smt. Dilkaura had gone to village Lwarkha hence he went to the village Lwarkha on 20.12.1982 where the husband of Smt. Dilkaura met him and he took husband of Smt. Dilkaura to village Barnu where the incident had taken place.

29. In view of the evidence of Ami Chand (P.W.2) it is quite clear that in the night of the occurrence i.e. on 18/19.12.1982 Smt. Dilkaura was in her house along with her kith without her husband. Therefore, she had a reasonable apprehension in her mind after seeing Kundan Singh-deceased coming to her house with an axe in her hand and she exercised the right of private defence of her person once while exercising the same, she assaulted Kundan Singh after snatching the axe from his hand resulting his death.

30. The evidence further reveals that Smt. Dilkaura when saw the deceased undan Singh coming to her house in the night, she immediately had a reasonable apprehension of danger in view of the threat extended by the deceased Kundan Singh during the day hours and she immediately having this apprehension pelted the stones at Kundan Singh so that Kundan Singh might escape from that place but when Smt. Dilkaura saw that Kundan Singh was stepping ahead even after pelting the stones and started climbing the wall of the house in order to enter inside the house then she snatched the axe from him and assaulted the same at him causing injuries on his person.

31. In view of the evidence available on the record it is quite clear that the facts of the present case were sufficient to prove that the accused/appellant had a right of private defence which extended to the causing of death because she had reasonable ground to apprehend that the death or grievous hurt would be caused to her and her kiths if she did not act promptly. The accused/appellant did not have to wait until the deceased assaulted at her with the axe having in his hand. The

threatening was earlier extended to appellant by the deceased during the day hours and consequently arrival of the deceased to the house of the accused/appellant in the dark hours of the night was the sufficient ground to have a reasonable apprehension in the mind of the accused/appellant of danger to her body as well as to her kiths.

32. On the basis of the assessment of evidence on record we are of the definite view that accused/appellant Smt. Dilkaura exercised the right of private defence of her person and while exercising the same she assaulted at the deceased Kundan Singh causing his death.

33. We are of the opinion that the accused/appellant had in fact not committed the murder of Kundan Singh and accordingly she could not have been convicted for the offence under Section 302.I.P.C.

34. To our mind the impugned judgment and order passed by the Sessions Judge is liable to be set aside.

35. The appeal is thus allowed. Conviction and sentence thereon passed by the court below vide impugned judgment and order dated 23.11.1983 is hereby set aside.

(B.C. Kandpal, J.) **(P.C.Verma, J.)**

December 20, 2004
ASWAL